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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1975

No. 75-1031

DANIEL SIFTON, ERIC SIFTON, and LORI SIFTON, minors, BY ELSIE CAROLINE SIFTON and ASHFORD DAVID SIFTON, THEIR GUARDIANS,

Petitioners,

vs.

RICHARD THOMAS MURPHY; CURTIS PODRATZ; and DOES 1 through 20, Inclusive,

Respondents.

FREDERICK CHRISTIAN FRIES,

Petitioner,

vs.

CITY OF INGLEWOOD, STEVE COMBS, CHUCK NORRIS KARATE STUDIOS, INC., DOES 1 through 20, Inclusive.

Respondents.

PETITION FOR WRIT OF CERTIORARI

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Vol. I

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PETITION FOR WRIT OF CERTIORARI

A SUMMARY STATEMENT OF THE PETITIONERS' CONTENTIONS.

Sifton v. County of Ventura is an action brought by the minor plaintiffs for the wrongful deaths of their parents.

Fries v. City of Inglewood is an action for personal injuries suffered by the adult plaintiff.

The plaintiffs in both actions were dismissed, by way of demurrer, for failure to comply with the California Government Tort Claims Act (California Government Code §§900 et seq.). Essentially, the tort claims act requires a plaintiff to file a claim with the public entity involved within 100 days of the accrual of the cause of action (California Government Code §911.2). In the case of minors, such as the plaintiffs in Sifton, relief will be granted from the 100 day claim requirements if a proper request is made within one year of the accrual of the cause of action (California Government Code §946.6).

In no case may a plaintiff file a civil action against a public entity before a claim has been duly made and denied (California Government Code §945.4).

The minor plaintiffs in Sifton did not file a claim with the County of Ventura within 100 days of the death of their parents, nor did they seek relief from the 100 day requirement within one year from their parent's death. Likewise, the adult plaintiff in Fries did not file a claim within 100 days from the date he was injured as a result of the negligence of certain employees of the City of Inglewood.

Generally, in California the statute of limitations for minors is tolled until they reach their eighteenth year. In the case of adult plaintiffs the statute of limitations in a personal injury action is one year (California Civil Code §340). In both Fries and Sifton had the defendants been private rather than public tort feasors the statute of limitations would not have acted as a bar to the causes of action of the respective plaintiffs.

The petitioners in both cases contend that the arbitrary treatment of the victims of governmental tort feasors (as opposed to the victims of private tort feasors) bears no rational relationship to any legitimate state purpose in enacting the California Government Tort Claims Scheme (California Government Code §§900 et seq.).

Secondly, the petitioners in both cases contend that the limited waiver of soverign immunity represented by the California Government Tort Claims Scheme violates the due process clause contained in the XIVth Amendment

to the United States Constitution. The California Government Tort Claims Scheme is a capricious and arbitrary exercise of legislative power whereby a wrongful and highly injurious invasion of the claimants' property rights is sanctioned and the litigant who fails to submit the notice of claim is stripped of all real remedy.

The highest courts of the states of Michigan, Washington, and Nevada have held government tort claims statutes essentially the same as California's violative of the due process and equal protection clauses of the XIVth Amendment to the United States Constitution (Mich.: Reich v. State Highway Dept., 386 Mich. 617, 194 N.W. 2d 700 (1972); Wash: Jenkins v. State, 540 P. 2d 1363 (Wash. 1973); Nev.: Turner v. Staggs, 89 Nev. 230, 510 P. 2d 879 (1973); See also Krause v. State (Ohio - 1971) 28 Ohio App. 2d 1, 57 Ohio Ops. 2d 1, 274 N.E. 2d 321.)

The Supreme Court of California has upheld the California Government Tort Claims Scheme (Tammen v. County of San Diego, 66 Cal. 2d 468 (1967); Whitfield v. Roth, 10 Cal. 3d 874 (1974); see also Roberts v. State of California, 39 Cal. App. 3d 844, 848-850, the most comprehensive statement of the California position regarding the Constitutionality of California Government Code §§ 911.2, 946.6, 945.4).

In view of this divergence of views by the various state courts as to the proper application of the due process and equal protection clauses of the XIVth Amendment to this area of nationwide and pressing interest, petitioners respectfully request that this Court grant the instant petition for writ of certiorari.

PETITION FOR WRIT OF CERTIORARI

Petitioners pray that a writ of certiorari issue to review the judgment herein of the California Supreme Court entered regarding both of the above-entitled cases on October 23, 1975.

OPINION BELOW

Sifton v. County of Ventura

On December 28, 1973, the Superior Court of the State of California, for the County of Ventura, sustained without leave to amend respondent County of Ventura's demurrer to minor petitioners' second amended complaint (in an action to recover damages for wrongful death) on the grounds that Petitioners had not complied with the California Tort Claims Act

and that the statute of limitations was a bar to Petitioner's complaint. Judgment of Dismissal as to Respondent County of Ventura was filed on January 8, 1974 (C.T. p. 201) and Notice of Entry of Judgment as to respondent County was filed January 9, 1974 (C.T. p. 203).

Petitioners' filed their Notice of Appeal on January 25, 1974 (C.T. p. 204). The Court of Appeal, Second Appellate District, State of California in an opinion not to be published in the official reports, Sifton v. County of Ventura, 2d Civil No. 44073 (Ct.App., filed June 30, 1974) (Appendix A) affirmed the judgment of the Superior Court.

The Petitioners' request for review by the California Supreme Court of the decision of the Court of Appeal, Second Appellate District, State of California, and of the Superior Court of the State of California, for the County of Ventura was denied without benefit of a hearing by the California Supreme Court on October 23, 1975. Sifton v. County of Ventura, 2d Civil No. 44073 (October 23, 1975).

Fries v. City of Inglewood

On October 24, 1974, petitioner Frederick Christian Fries suffered personal injuries as a result of the negligence of the City of Inglewood and its employees.

Although he had contacts with employees of the City of Inglewood, respondent here, arising out of the incident, Mr. Fries was not informed of the necessity of making a formal written claim pursuant to the California Tort Claims Act with the City of Inglewood until after the 100 day notice period had run, February 21, 1973.

Mr. Fries consulted with an attorney soon after that date and an application for leave to file a late claim was filed with the city on March 7, 1973. On April 23, 1973, the application was deemed denied. On October 3, 1973, Fries filed his petition for relief from the claims filing requirements in Superior Court. The petition was denied by the Hon. David A. Thomas, presiding in Department 85 of the Los Angeles Superior Court, on October 30, 1973. The trial court's judgments were affirmed by Second Appellate District, Division Two, on June 30, 1975, in an opinion not to be published in the official reports. Fries v. Combs, 2d Civil No. 45104 (Ct.App., filed June 30, 1975).

The petitioners' request for State Supreme Court review of the decision of the Court of Appeal, Second Appellate District, State of California and of the Superior Court of the State of California, for the County of Los Angeles was denied without benefit of a hearing by the California Supreme Court on October 23, 1975. Fries v. City of Inglewood, 2d Civil No. 54104 (October 23, 1975).

JURISDICTION

Sifton v. County of Ventura

The dismissal of the petition for hearing by the California Supreme Court was entered on October 23, 1975. Jurisdiction of this Court is invoked under 28 U.S.C. §1257(3).

Fries v. City of Inglewood

The dismissal of the petition for hearing by the California Supreme Court was entered on October 23, 1975. Jurisdiction of this Court is invoked under 28 U.S.C. §1257(3).

QUESTION PRESENTED

1. Are the California Notice of Claim Statutes (California Government Code §§900, et seq.) unconstitutional on their face and as applied to both adults and minors in that they are violative of the due process and equal protection guarantees of the XIVth Amendment to the United States Constitution.

CONSTITUTIONAL PROVISIONS INVOLVED

Section 1. "...[N]or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

XIV Amendment, United States Constitution.

STATUTORY PROVISIONS INVOLVED

California Government Code §905, 910, 911.2, 911.4, 915, 945.4, 945.6, 946.6 (full texts set forth in appendix).

STATEMENT OF THE CASE

Sifton v. County of Ventura

This wrongful death action arises out of a highway accident that occurred on February 21, 1971 on Highway 23, County of Ventura. On that date, defendant Podratz swerved to avoid an approaching car causing his car to run

onto the shoulder of the highway. As a result of the alleged negligent design and construction of the shoulder, Podratz' car swerved across the roadway striking a motorcycle ridden by petitioners' parents, David Franklin Sifton and Constance Rae Sifton. Mr. and Mrs. Sifton died as a result of the collision and are survived by the minor petitioners here: Daniel Sifton (age 13 at the time); Eric Sifton (age 9 at that time); and Lori Sifton (age 8 at that time). On March 22, 1971, the petitioner's grandparents, Elsie Caroline Sifton and Ashford David Sifton were appointed their legal guardians.

The procedural chronology of the lawsuit bears on the issues and must be summarized here very briefly.

The main action is an action for wrongful death brought by the heirs-at-law of decedents against Richard Thomas Murphy, Curtis Podratz, and DOES 1 through 20, inclusive. This action was filed by petitioners on July 6, 1971, who were unaware at that time of a possible theory of negligence against the County of Ventura, (joined as DOE 1 September 6, 1973).

On May 21, 1971, defendant Curtis Podratz filed a claim against respondent County of Ventura (C.T. p. 75-79).

Said claim was denied by operation of law July 6, 1971.

It will be recalled that independent of defendant Podratz' actions petitioners here filed for wrongful death against defendants Podratz and Murphy on July 6, 1971.

On January 6, 1972, defendant Podratz moved to file a cross-complaint against County of Ventura, et al.

After a series of demurrers, defendant and cross-complainant Podratz filed his First Amended Complaint on August 2, 1973.

On August 8, 1973, the parties to the main action stipulated to the filing of a First Amended Complaint by petitioners here adding a theory of negligent road design to plaintiff's previous allegations. Thereafter, respondent County was served as DOE I with the First Amended Complaint.

On September 6, 1973, respondent County of Ventura demurred to plaintiffs' First Amended Complaint, which demurrer was granted with twenty days to amend.

On November 1, 1973, petitioners here filed the Second Amended Complaint (C.T. p. 157) to which respondent demurred on November 26, 1973.

On December 28, 1973, the Ventura County Superior Court, Honorable Richard C. Heaton presiding, sustained respondent's demurrers without leave to amend on the grounds that:

Plaintiffs had not complied with the California Tort Claims Act (California Government Code §§911.2, 945.4).

Notice of entry of judgment for respondent Ventura County was filed January 9, 1974 (C.T. p. 204). The District Court of Appeal affirmed the trial court's order (Div. 3) on June 30, 1975. Sifton v. County of Ventura, 26 Civil No. 44073 (Ct.App., filed June 30, 1975).

The petitioners request for State Supreme Court review of the decision of the Court of Appeal, Second Appellate District, State of California and of the ruling of the Superior Court of the State of California, for the County of Ventura was denied without benefit of a hearing by the California Supreme Court on October 23, 1975. Sifton v. County of Ventura, 2d Civil No. 44073 (October 23, 1975). The Constitutional issues presented by this writ were first raised in plaintiff's written appeal to the California Court of Appeals.

Fries v. City of Inglewood

On October 24, 1972, Frederick Christian Fries suffered personal injuries as a result of the negligence of the City of Inglewood and its

employees.

Mr. Fries, at various times, informed at least four City of Inglewood employees of the incident and at least two of those employees treated him for injuries suffered thereby (C.T. pp. 28-29).

In addition to the severe and painful physical injuries suffered by Mr. Fries, there is some indication by his treating doctors that Mr. Fries suffered emotional and psychological trauma as well (C.T. p. 7, line 25 and p. 8, line 3).

Although he had contacts with employees of the City of Inglewood, respondent here, arising out of the incident, Mr. Fries was not informed of the necessity of making a formal written claim with the City of Inglewood until after the 100 day notice period had run, February 21, 1973 (California Government Code §§ 911.2, 945.4).

Mr. Fries consulted with an attorney soon after that date and a leave to file a late claim was filed with the city on March 7, 1973. On April 23, 1973, the application was deemed denied. On October 3, 1973, Fries filed his petition for relief from the claims filing requirements in Superior Court. The petition was denied by the Hon. David A. Thomas, presiding in Department 85 of the Los Angeles Superior Court, on October 30, 1973. The trial court's judgments were affirmed by

Second Appellate District, Division Two, on June 30, 1975. Fries v. Combs, 2d Civil No. 45104 (Ct.App., filed June 30, 1975). The Petitioners request for State Supreme Court review of the decision of the Court of Appeal, Second Appellate District, State of California and of the Superior Court of the State of California, for the County of Los Angeles was denied without benefit of a hearing by the California Supreme Court on October 23, 1975. Fries v. City of Inglewood, 2d Civil No. 45104 (October 23, 1975). The constitutional issues raised in this writ were first raised in plaintiff's appeal to the California Court of Appeals.

REASONS FOR GRANTING THE WRIT

CERTIORARI SHOULD BE GRANTED TO REVIEW THE HOLDING OF THE COURT BELOW TO THE EFFECT THAT THE CALIFORNIA STATUTORY REQUIREMENT THAT A CLAIM MUST BE PRESENTED TO A PUBLIC ENTITY BEFORE SUIT MAY BE BROUGHT AGAINST SUCH ENTITY DOES NOT VIOLATE EITHER, ON ITS FACE OR AS APPLIED TO BOTH ADULTS AND MINORS, THE CONSTITUTIONAL GUARANTEES OF DUE PROCESS AND EQUAL PROTECTION OF THE LAWS, SINCE IN SO HOLDING, THE COURT BELOW VIOLATED PETITIONERS RIGHT TO DUE PROCESS AND EQUAL PROTECTION OF THE LAW.

The United States Constitution provides that no state shall deprive any person of property without due process of law and that no state shall deny to a person the equal protection of the laws.

United States Constitution, 14th Amendment.

Petitioners submit that the claim requirements of the California Government Code violate these provisions, both on their face and as applied to both adults and to minors.

The question of whether state Government Tort Claims Statutes such as California Government Code §900, et seq. violate the Due Process and Equal Protection Guarantees of the United States Constitution is a federal question of substance that has not heretofore been determined by this Court.

When an individual is injured by a tort for which an entity of the state government, or one of its employees, is responsible, he must, in order to seek judicial relief, go through a maze of requirements, replete with traps and exceptions, and exceptions to the exceptions, and other confusions and obstacles that do not exist for the non-government tort victim. The following are some of the requirements.

(1) In order to be eligible for relief, the victim, or his representative must present a claim for compensation to the entity which is allegedly responsible for the injury. (Government Code §§ 905, 910 and 915).

(2) All claims for personal injury must be presented within 100 days of the accrual of the cause of action. (Government Code § 911.2).

(3) A governmental tort victim cannot seek judicial relief until he has presented a claim and it has been rejected by the entity. (Government Code §945.4).

(4) The filing of a claim requirement is a mandatory condition which applies to minors as well as adults. Failure to meet the filing period of a hundred days can bar relief. Consequently, compliance with the claim requirement must be pleaded and proved in order to maintain a suit against the Government.

(5) Suits must be brought within six months of receiving notice of rejection of the claim from the public entity. (If a claimant does not receive a notice of rejection, he is allowed two years from the accrual of the cause of action in which to file suit. (Government Code §945.6).

(6) If the claimant does not file a claim within the one hundred days filing period, he may seek relief by following the procedures set forth in Government Code §946.6.

(7) The late claimant must first apply to the governmental

entity for permission to file a late claim. (Government Code §911.4).

(8) The application to the governmental entity for permission to file a late claim, must be made within a reasonable time, not to exceed one year from the accrual of the cause of action. (Government Code §911.4).

(9) If the application for permission to file a late claim is denied by the governmental entity, then within six months of the rejection the claimant may petition the court for permission to sue the entity without filing a claim. (Government Code §946.6).

(10) If the claimant is an adult he must establish that the failure to present the claim in a timely fashion was through mistake, inadvertence, surprise or excusable neglect. If the claimant was a minor during the entire one hundred day period specified in §911.2 this shall be deemed sufficient (§946.6). It should be noted that a minor is treated the same as an adult in that both have only one year from the accrual of the cause of action to file a petition

for permission to sue the government entity without filing a claim (946.6). Ordinarily a minor in California has until his majority to pursue a tort cause of action for personal injury or wrongful death. (Civil Code §340).

(11) If the court grants permission to sue without filing a claim, the claimant must file a suit within thirty days. (Government Code §946.6).

(12) If the court denies the claimant permission to sue the entity, then the claimant has forever lost his right to have a judicial determination on the merits of his case in order to seek recovery for his injuries.

The effect of the claims requirements is that the victim of a governmental tort in California is treated substantially different from the victim of a private tortfeasor.

The governmental tort victim not only carries different procedural burdens, but also encounters penalties that do not exist for the non-governmental tort victim.

One of the basic differences between the two types of tort victims is that each is controlled by separate time requirements. While

the non-governmental tort victim is only concerned with the statute of limitations, his counterpart must satisfy an initial time requirement as well as a different statute of limitations.

The governmental tort victim can be within the statute that would apply to his cause of action if it were not for the status of his tortfeasor, and still be barred from receiving relief because of the failure to meet either the initial claim filing period, or the shorter subsequent statute of limitations.

Although the California Supreme Court has upheld the constitutionality of California Government Code §900 et seq. against due process and equal protection attacks, Tammen v. County of San Diego, 66 Cal. 2d 468 (1967), recent decisions of the Supreme Courts of three sister states have held similar Governmental Tort Claims Statutes unconstitutional on the grounds that such statutory schemes violate either the due process or equal protection guarantees of the United States Constitution.

In a 1972 Michigan Supreme Court case, Reich v. State Highway Department, 194 N.W. 2d 700, 386 Mich. 617 (1972) the Court was faced with a statute essentially similar to the California scheme. The Michigan statute required that an injured plaintiff serve written notice of claim upon the public entity within 60 days of the accrual of the causes of action. The court held that the claims provisions violated due process as applied to minors.

In the case of Turner v. Staggs, 510 P. 2d 879 (1973) the Nevada Supreme Court was faced with statutory provisions which provided that no person shall sue a governmental entity of that state for a demand arising out of a governmental tort unless he first presents a claim within 6 months from the time such tort occurred. The Court held that such arbitrary treatment clearly violated equal protection guarantees of the state and United States Constitutions.

In the recent case of Hunter v. North Mason High School, 539 P. 2d 845 (1975) the Supreme Court of Washington was faced with the constitutionality of a state statutory scheme which required persons suing the government to give it notice of their claims within 120 days after the date on which the claim arose. The court held that such statutes unjustifiably discriminated against persons with claims against the government and its subdivision in violation of the equal protection clause of the Fourteenth Amendment to the U. S. Constitution.

Unlike the well reasoned opinions of the Nevada, Michigan and Washington Supreme Courts which found their respective claims statutes unconstitutional, the opinions of the California Supreme Court holding the California statutory claims scheme constitutional are conclusionary rather than analytical.

In Tammen v. County of San Diego, 66 Cal. 2d 468 (1967) the California Supreme Court posed for itself the question of whether the California claims statutes violate constitutional guarantees of due process and equal protection of the laws. The court answered the question with one word, no, and cited Dias v. Eden Township Hospital Dist., 57 Cal. 2d 502 (1962).

In Dias the California Supreme Court had previously upheld the statutory requirement that a claim be presented as a condition precedent to maintenance of actions against public entities. It came to its conclusion merely on the basis that "the principal purpose of such statutes is to give a public entity timely notice of the nature of claims against it so that it may investigate and settle those of merit without litigation," and that "public agencies, generally speaking, afford a proper subject for legislative classification."

The most recent articulation of the California Supreme Court view on this point was in the case of Whitfield v. Roth, 10 Cal. 3d 874 (1974) wherein footnote 20 the court stated:

> "In view of our disposition of the case, it is unnecessary to consider plaintiff's contention that the claims statutes are unconstitutional, both on their face and as applied to minors. However, we note that no arguments or authority

> have been brought to our attention which would suggest that our decision in Tammen v. County of San Diego, supra, 66 Cal. 2d 468, 481, 58 Cal. Rptr. 249, 426 P. 2d 753, upholding the constitutionality of the claims statute, is no longer valid."

It has been left, therefore, to the California Courts of Appeal to more fully explain the California position. In one of the cases at bar, Sifton v. County of Ventura, (cited supra) the Court of Appeal analyzed the California statutes in light of the Michigan Supreme Court case, Reich v. State Highway Department (cited supra) and the Nevada Supreme Court case of Turner v. Staggs (cited supra). In Sifton the Court of Appeal cited with approval the following language from another Court of Appeal case, Roberts v. State of California, 39 Cal. App. 3d 844, 848-850, as stating the rationale which resolves the constitutional conflict created when essentially similar state government claims statutes (such as California's, Nevada's and Michigan's) can be held to be constitutional by the Supreme Court of California on the one hand and violative of due process and equal protection by the Supreme Courts of Michigan and Nevada on the other.

> "The contention that the [California] claims statutes violate the equal protection of laws

provisions of the United States Constitution rests upon the assertion that by barring a lawsuit to a person who has not first filed a claim with a public entity within 100 days, while such a provision does not exist as a bar to other prospective defendants, an arbitrary or special class of wrongdoers has been established. It is argued that the California Legislature had intended, by its enactments permitting public entities to be sued, to place them on the same footing as private tortfeasors and that the 100-day limitation is an unreasonable classification and defeats the legislative intention. It is claimed that the 100-day notice requirement is a special statute of limitations arbitrarily barring actions by victims of governmental negligence while the victims of private negligence have one year in which to bring their actions. (Code Civ. Proc., §340.) Plaintiff's counsel relies upon cases in Nevada and Michigan in which it has been held that since legislation in those states had the principal goal of putting public entities on an 'equal footing' with private tortfeasors, any different treatment was an unreasonable classification. . . (Turner v. Staggs (1973) 89 Nev. 230 [510 P. 2d 879]; Reich v. State Highway Department (1972) 386 Mich. 617

[194 N.W. 2d 700]; cf., Krause v. State (1971) 28 Ohio App. 2d 1 [57 Ohio Ops. 2d 1, 274 N.E. 2d 321].) . . . There is a basic distinction, however, between statutes that aim at placing or actually do place the state or other public entities on an equal basis with private tortfeasors and our California statutes. Our statutes were enacted after the decision of the California Supreme Court in Muskopf v. Corning Hospital Dist. (1961) 55 Cal. 2d 211 [11 Cal. Rptr. 89, 359 P. 2d 457], which held that common law governmental immunity must be discarded and indicated a disposition to treat all tortfeasors, public and private, alike insofar as basic liability was concerned. The legislative response to Muskopf achieved a result entirely different from that which plaintiff urges should have been effected. It enacted a series of statutes to provide, in effect, that there is governmental immunity except for the very specific areas in which the statutes allowed suits. (See, Gov. Code, § 815; Nestle v. City of Santa Monica (1972) 6 Cal. 3d 920, 931-932 [101 Cal. Rptr. 568, 496 P. 2d 480].) Since the enactment of the statutes in question, courts have uniformly upheld them against constitutional attack and

particularly against a classification challenge. (Tammen v. County of San Diego, supra, 66 Cal. 2d 481; see also, Bozaich v. State of California, supra, 32 Cal. App. 3d p. 699; Hom. v. Chico Unified Sch. Dist. (1967) 254 Cal. App. 2d 335, 338 [61 Cal. Rptr. 920].) The argument in plaintiff's closing brief that 'when the state undertakes to divest itself from the cloak of immunity it must stand on an equal basis with other similarly situated tortfeasors' would have merit only if the California Legislature so provided, or in some legislative action indicated that the reasons for the claims statute no longer had compelling force. But it did not. The fact that other states moved in that direction is irrelevant. We are in agreement with the decisions just cited upholding the constitutionality of the time limitation provisions of the claims statutes involved herein."

The thrust of the California position is that in essence the state may deny due process and equal protection of the laws via its claims statutes because the state has made only a limited and conditional waiver of sovereign immunity. This argument will not bear constitutional scrutiny.

The rationale offered by the California Courts of Appeal was considered and rejected as unconstitutional by the Supreme Court of Washington in Jenkins v. State, 540 P. 2d 1363 (Wash. 1973). The court stated:

> "Respondent relies heavily on the majority view in Cook v. State, 83 Wash. 2d 599, 521 P. 2d 725 (1974) that Washington has made only a limited and conditional waiver of sovereign immunity. Thus, respondent argues, the state is free to impose whatever conditions it pleases with respect to actions against the state or any of its political subdivisions, municipal corporations or quasi municipal corporations. However, this argument rests on the erroneous assumption that because a state may validly choose either to maintain or to waive its sovereign immunity protection, any conditions, however arbitrary, that may be imposed in the process are constitutional. In reality, sovereign immunity has nothing to do with the ultimate classifications which conditions establish. Once sovereign immunity has been waived, even partially, any legislative classifications made with reference thereto will be constitutional only if they conform to the equal protection guarantees of the state and federal

constitutions.

> "Accordingly, in the absence of a rational basis for providing otherwise, all persons similarly situated must be provided equal access to the courts for the redress of wrongs committed by governmental entities." 540 P.2d at 1367-1368.

Further criticism of the constitutionality of the California position and of the constitutionality of Claims Statutes in general may be found in Note, "Notice of Claim Provisions: On Equal Protection Perspective," 60 Cornell L.Rev. 417 (1975) in which the author states:

> "Of the two broad avenues which the courts have taken in repelling constitutional attacks on notice of claim statutes - the rational relationship approach and the sovereign immunity approach - only the former is assessable in terms of equal protection. The latter, by its very nature, is violative of equal protection since it makes the illogical assumption that notice provisions are constitutional because a state may validly choose either to maintain or to waive its sovereign immunity protection, and that in the process any conditions, however arbitrary, may be imposed.

> In reality, sovereign immunity has nothing to do with the ultimate classifications which notice provisions establish. Standing alone therefore, this principle cannot be said to clothe the resulune distinctions with a semblance of rationality. Rather, once sovereign immunity has been waived, any legislative classifications made pursuant thereto will be constitutional only if they conform to the rational relationship test. Thus, the appropriate question for consideration is: do the classifications erected through notice of claim provisions have some rational relationship to the state's legislative purposes, or do they rest on grounds wholly irrelevant to the achievement of the State's objective?"
> 60 Cornell L.Rev. 417, 440 (1975)

1. The California Notice of Claim Statute is Violative of Equal Protection.

That Notice of Claim Statutes bear no rational relationship to the state's articulated legislative purpose in enacting them and thus violate the equal protection guarantees of the

Fourteenth Amendment is demonstrated by the rationale of the Supreme Court of Washington in Hunter v. North Mason High School (cited supra). There the court stated that the effect of the claim statutes:

> " is to deny a right of action to persons harmed by governmental misfeasance unless they provide the government with notice of their injuries within a short time after they occur. This prerequisite to tort recovery has no counterpart in actions between private parties. The statutes thus create two classes of tortfeasors, governmental and nongovernmental, and grant the one of procedural advantage not available to the other. Concomitantly they produce two classes of tort victims and place a substantial burden on the right to bring an action of one of them.
>
> "Just as the notice requirement by its operation divides the natural class of negligent tortfeasors, so too the natural class of victims of negligent conduct is also arbitrarily split into two subclasses: victims of governmental negligence who must meet the requirement, and victims of private negligence who are subject to no such requirements." 539 P.2d at 847 (Wash. 1975).

The court went on to say that claim statutes present a barrier for many victims of governmental misfeasance. Rarely does the average victim know of the short notice period or consult a lawyer prior to the expiration of his time to file. Claim statutes thus grossly magnify the unfair impact created by the unequal distribution of legal counsel and knowledge between the rich and poor.

The court noted that:

> "The effect of the notice requirement on tort victims not fortunate enough to be aware of it is to deny them their cause of action. The right to be indemnified for personal injuries is a substantial property right, not only of monetary value but in many cases fundamental to the injured person's physical well-being and ability to continue to live a decent life. Statutory classifications which substantially burden such rights as to some individuals but not others are permissible under the equal protection clause of the Fourteenth Amendment only if they are 'reasonable, not arbitrary, and . . . rest upon some ground of difference having a fair and substantial relation to the object similarly circumstanced shall be treated alike.' Royster Guano Co. v. Virginia, 253 U.S. 412, 415, 40 S.Ct. 560, 561,

64 L.Ed. 989 (1920). Reed v. Reed, 404 U.S. 71, 76, 92 S.Ct. 251, 30 L.Ed.2d 225 (1971); Kahn v. Shevin, 416 U.S. 351, 255, 94 S.Ct. 1734, 40 L.Ed.2d 189 (1974); Dandridge v. Williams, 397 U.S. 471, 520-22, 90 S.Ct. 1153, 25 L. Ed.2d 491 (1970) (Marshall, J., dissenting); Washington Statewide Organization of Stepparents v. Smith, 85 Wash.2d 564, 572, 563 P.2d 1202 (1975) (Utter, J., concurring)."

The court continued in a footnote that:

"5. This 'substantial rationality' requirement has been reenunciated in recent decisions of the United States Supreme Court See Gunther, Foreword. In Search of Evolving Doctrine on a Changing Court; A Model for a Newer Equal Protection, 86 Harv. L.Rev. 1 (1972). It does not reduce the 'strict scrutiny' appropriate where fundamental rights or 'suspect classifications' are affected. See e.g., Memorial Hospital v. Maricopa County, 415 U.S. 250, 94 S.Ct. 1076, 39 L.Ed2d 306 (1974); In re Griffiths, 413 U.S. 717, 93 S.Ct. 2851, 37 L.Ed.2d 910 (1973); State v. Koome, 84 Wash.2d 901, 530 P. 2d (1975). Nor does it alter the

strong presumption of constitutionality given classification in state regulation of business and economic matters, which are invalid only if they fail to bear a 'rational relationship' to a permissible state objective. Belle Terre v. Boraas, 416 U.S. 1, 94 S.Ct. 1536, 39 L.Ed.2d 797 (1974); United States v. Kras, 409 U.S.434, 93 S.Ct. 631, 34 L.Ed.2d 626 (1973); Sonitrol Northwest Inc. v. Seattle, 84 Wash.2d 588, 528 P.2d 474 (1974).

"According to Gunther, the court in some cases has been focusing on the substantiality of the relationship between the discrimination made and the state objective allegedly furthered thereby, rather than on the validity or importance of those objectives. See Gunther, supra at 20-24. If the statutory lines substantially conform to a permissible state purpose, the distinction they draw will survive judicial review without any 'balancing' of the relative value of the interests they advance and those they inhibit. If they do not they will not, for discriminatory legislation cannot be validated by reference to a purpose it does not serve, however laudable or important

that purpose may be.

> "We do not need to rest our decision in this case on the 'substantial basis' tests of Royster Guano Co. v. Virginia, 253 U.S. 412, 40 S.Ct. 560, 64 L.Ed. 989 (1920) alone, however: There is, in fact, not even a reasonable difference between the classes involved here which relates to a legitimate state interest. Cook v. State, supra, 83 Wash.2d at 607, 614, 521 P.2d 725 (concurring opinion); see footnote 8, infra."
> 539 P.2d at (1975).

The court went on to analyze the "grounds for difference" most often put forward as justification for special demands that claim statutes place on persons with claims against the government and found each of them insufficient to withstand constitutional scrutiny.

The court rejected the argument that the size of governmental institutions and the number of potentially liability producing incidence require that special notice be given so that the entity involved may adequately investigate and defend. The court noted that, as a class, governmental bodies are neither larger nor more liability-prone than the class of private tortfeasors which range from single individuals to giant corporations. In fact, in many instances governmental subdivisions are better

equipped to investigate and defend than most private tortfeasors for whom the law provides no special protection.

The court stated that other purported objectives of claims statutes are likewise inadequate to support the distinction they draw. Claims statutes do little to facilitate budget planning as governmental entities too small to self-insure will usually purchase insurance like any private individual or corporation. Similarly, quick notice of possible hazards in order to make needed repair is not more important simply because the entity responsible is governmental rather than private. Finally, encouraging negotiation and settlement and thereby reducing the amount of litigation is equally desirable for private as well as governmental entities.

When analyzed critically it becomes apparent that the only function that governmental claims statutes seem to perform is to protect the government from responsibility for its wrong doing.

The court concluded by saying:

> "We follow a growing number of courts in holding that the arbitrary burden placed on state claimants by this type of statute cannot withstand constitutional scrutiny."
> 539 P.2d at 851.

2. The California Notice of Claims Statute is Violative of Due Process.

Due process guarantees are also violated by notice of claim statutes.

Due process of law is, in its most fundamental sense, a limitation upon arbitrary power and a guarantee against arbitrary legislation. It further demands that the law shall not be unreasonable, arbitrary or capricious and that the means selected shall have a real and substantial relation to the object sought to be attained.

Basically, it has been stated that governmental claim requirements have a two fold purpose: (1) the entity should have an opportunity to investigate promptly while the evidence and witnesses are available. (2) The entity, having obtained full information should have an opportunity to settle meritorious claims without litigation. California Government Code 911.2 (West 1973); 38 Cal. L. Rev. 259.

As was demonstrated by the Washington Supreme Court in Hunter, supra, these original policy considerations today have lost their validity and cease to exist. Many governmental units and agencies are covered by liability insurance. In addition to insurance investigators, they have full-time attorneys at their disposal to

promptly investigate the causes and effects of alleged tortious acts. As a result, the governmental entity is generally better prepared to investigate and defend negligence suits than are most private tortfeasors to whom no special notice privileges have been granted by the legislature.

The victim of the governmental entity tortfeasor is thus stripped of all real remedy if he fails to submit the required notice of claim. Since there is no basis for the distinction made between the victim of the private tortfeasor and the victim of the governmental entity tortfeasor, the exercise of legislative power is here capricious and arbitrary.

It should also be noted that the right to be indemnified for personal injuries is a substantial property right, not only of monetary value but in many cases fundamental to the injured person's physical well-being and ability to continue to live a decent life.

Hunter v. North Mason High School, (cited, supra).

To allow the legislature to take away a plaintiff's cause of action because he could not meet the notice provisions of the government tort claims statute would be to deprive him of a vested right of action.

Notice of claim statutes similar to that of California have been successfully challenged

on due process grounds in the Supreme Court of Michigan. In Reich v. State Highway Department, (cited supra) the plaintiffs were minors suing for negligent failure to maintain public property. The Nevada Supreme Court held that the claim provisions violated due process as applied to minors. Noting that "the disabilities of minors, particularly of infants, have long been recognized and protected by the law" (194 N.W.2d at p. 701 the court adopted the following reasoning:

> ". . . we reject and overrule the reasoning under the (decisions upholding claims statutes) and condemn the purely capricious and arbitrary exercise of legislative power whereby a wrongful and highly injurious invasion of rights is sanctioned and the litigant who fails to submit the required notice of claim is stripped of all real remedy.: (194 N.W.2d at p. 701).

Generally, public policy, legislation and case law have all joined in seeking to protect the rights of minor claimants such as the petitioner in Sifton.

In Muskopf v. Corning Hospital District (1961) 55 Cal.2d 211, 11 Cal.Rptr. 89, the California Supreme Court concluded that governmental immunity from tort liability must be discarded as mistaken and unjust. The court

therein recognized that claimants are invested with a vested right in their cause of action against government entities. The court, however, refused to recognize the inherent unconstitutionality of government claim statutes the effect of which is to strip both adult and minor plaintiffs of their vested rights if the claim requirements are not met. This, of course, deprives them of due process of law in an arbitrary manner.

This Court should grant certiorari to settle the substantial constitutional conflict existing between the California Supreme Court and the Supreme Courts of three sister states as to whether essentially similar state notice of claim statutes violate the due process and equal protection guarantees of the United States Constitution.

CONCLUSION

The California Government Tort Notice of Claim statutes violate the equal protection and due process provisions of the United States Constitution. Both on their face and as applied to adults and minors, the statutory provisions create an unreasonable and unjust classification of tort victims dependent on the nature of the tortfeasor.

The question presented here has vast federal significance as the majority of states have essentially similar notice of claim statutes and as there is a growing conflict among the opinions of states faced with the question of the constitutionality of such statutes.

It is respectfully prayed that a writ of certiorari be granted to review the judgment of the California Supreme Court and to resolve the conflict which exists between the Supreme Court of California and the Supreme Courts of Michigan, Nevada and Washington, as well as the growing number of states which will soon be faced with the same dilemma.

Respectfully submitted,

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